

Notice of Allowability

Application No.

10/716,314

Examiner

Agnes B. Rooke

Applicant(s)

STEWART ET AL.

Art Unit

1656

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 11/30/2006.
2. ☒ The allowed claim(s) is/are 23, 24, 32, and 34 (as amended).
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of the:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

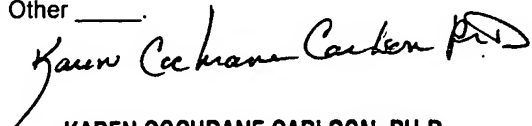
* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date 06/26/2006
- ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
- ☐ Notice of Informal Patent Application
- ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
- ☒ Examiner's Amendment/Comment
- ☐ Examiner's Statement of Reasons for Allowance
- ☐ Other _____



KAREN COCHRANE CARLSON, PH.D.
PRIMARY EXAMINER

DETAILED ACTION

An **Examiner's Amendment** to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Mr. Segal on February 12, 2007.

Rejoinder of Group II and Group III

The Restriction requirement dated 10/31/2006 is withdrawn, since Groups II and III are rejoined because of their overlapping subject matter.

In the response to the Restriction Requirement, Applicants elected claims 23, 24, and 32 of Group III.

Upon reconsideration of the restriction requirement in view of the allowable subject matter, examiner concluded that claim 22 of Group II has an overlapping subject matter with the elected invention of Group III and thus examiner will rejoin claim 22 of Group II with the elected invention of Group III.

The new Restriction Requirement upon the rejoinder of previous Groups II and III is as follows:

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 2-5, 10-13, 30, and 31, drawn to a peptide of SEQ ID NO:2 and its pharmaceutical composition, classified in class 530, subclass 350.
- II. Claims 22, 23, 24, and 32, drawn to a method of treatment of migraine with SEQ ID NO:2, and to a method of providing analgesia by administering SEQ ID NO:2, classified in class 514, subclass 12.
- III. Claims 25 and 33, drawn to a method of reducing wrinkles by administering SEQ ID NO:2, classified in class 514, subclass 12.
- IV. Claim 26, drawn to an antibody, classified in class 530, subclass 387.1.
- V. Claims 28 and 29, drawn to a nucleic acid encoding SEQ ID NO:2, classified in class 435, subclass 69.1.

Claim 22, as currently presented, will be cancelled and re-written as a dependent claim 34 that depends from elected claim 23.

All other claims that refer to non-elected subject matter and claim 22 (as being amended to depend from claim 23) will be cancelled.

The amendments to the claims will be as follows:

1. Please cancel claims: 2-5, 10-13, 22, 25-26, 28-31, and 33.
2. In claim 23: line 2, after the word "mammal" insert --- in need thereof ---
3. Add new claim 34 that reads ---The method of claim 23, wherein the mammal suffers from migraine, myofacial and other types of pain, muscle tremors, neuromuscular diseases, or excessive sweating.---

Allowed claims

Allowed claims will be: 23, 24, 32, and 34 (as amended).

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Agnes Rooke whose telephone number is 571-272-2055. The examiner can normally be reached at 6:00 AM to 3:30 PM MAX/FLEX.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kathleen Kerr Bragdon can be reached on 571-272-0931. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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KAREN COCHRANE CARLSON, PH.D
PRIMARY EXAMINER